

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 651

BY EDUCATION COMMITTEE

AN ACT

RELATING TO EMPLOYEES OF SCHOOL DISTRICTS; AMENDING SECTION 33-1209, IDAHO CODE, TO REVISE PROCEDURES, PROCESSES AND FEES BEFORE THE PROFESSIONAL STANDARDS COMMISSION, TO DEFINE THE TERM "TEACHER" AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 12, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-1210, IDAHO CODE, TO DEFINE TERMS AND TO PROVIDE FOR AN APPLICANT FOR EMPLOYMENT AT A SCHOOL DISTRICT TO SIGN A RELEASE THAT PRIOR PERSONNEL FILES SHALL BE RELEASED TO THE DISTRICT, TO PROVIDE IMMUNITY FROM LIABILITY AND TO PROVIDE PENALTIES FOR DISCLOSURE OF INFORMATION; AND AMENDING SECTION 33-1211, IDAHO CODE, TO DELETE REFERENCE TO A PREVIOUSLY REPEALED CODE SECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-1209, Idaho Code, be, and the same is hereby amended to read as follows:

33-1209. PROCEEDINGS TO REVOKE, SUSPEND, DENY OR PLACE REASONABLE CONDITIONS ON A CERTIFICATE -- LETTERS OF REPRIMAND -- COMPLAINT -- SUBPOENA POWER -- HEARING. (1) The professional standards commission may conduct investigations on any signed allegation of unethical practice of any teacher brought by:

(a) An individual with a substantial interest in the matter, except a student in an Idaho public school; or

(b) A local board of trustees.

The allegation shall state the specific ground or grounds for revocation, suspension, placing reasonable conditions on the certificate, or issuance of a letter of reprimand. The chief certification officer shall conduct an initial investigation of the allegation, and shall afford the teacher the opportunity to respond to the allegation verbally or in writing. Upon conclusion of the initial investigation, the chief certification officer shall dismiss the allegation, issue an informal letter of reprimand without sanctions, or forward the case to the executive committee. The executive committee of the professional standards commission shall review the circumstances of the forwarded case and determine whether probable cause exists to warrant the filing of a complaint and the requesting of a hearing.

(2) Proceedings to revoke or suspend any certificate issued under section 33-1201, Idaho Code, or to issue a letter of reprimand or place reasonable conditions on the certificate shall be commenced by a written complaint against the holder thereof, and shall afford the teacher an opportunity to respond to the allegation verbally or in writing prior to the issuance of the complaint. Such complaint shall be made by the chief certification officer stating the ground or grounds for issuing a letter of reprimand, placing reasonable conditions on the certificate, or for revocation or suspension and proposing that a letter of reprimand be issued,

1 reasonable conditions be placed on the certificate, or the certificate
2 be revoked or suspended. A copy of the complaint shall be served upon the
3 certificate holder, either by personal service or by certified mail.

4 (3) Not more than thirty (30) days after the date of service of any
5 complaint, the person complained against may request, in writing, a hearing
6 upon the complaint. Any such request shall be made and addressed to the
7 state superintendent of public instruction; and if no request for hearing
8 is made, the grounds for suspension, revocation, placing reasonable
9 conditions on the certificate, or issuing a letter of reprimand stated in
10 the complaint shall be deemed admitted. Upon a request for hearing, the
11 chief certification officer~~r~~ shall give notice, in writing, to the person
12 requesting the hearing, which notice shall state the time and place of the
13 hearing. The time of such hearing shall not be less than five (5) days from
14 the date of notice thereof. Any such hearing shall be informal and shall
15 conform with chapter 52, title 67, Idaho Code. The hearing will be held
16 within the school district in which any teacher complained of shall teach, or
17 at such other place deemed most convenient for all parties.

18 (4) Any such hearing shall be conducted by three (3) or more panel
19 members appointed by the chairman of the professional standards commission,
20 a majority of whom shall hold a position of employment the same as the person
21 complained against. One (1) of the panel members shall serve as the panel
22 chair. The panel chair shall be selected by the chairman of the professional
23 standards commission from a list of former members of the professional
24 standards commission who shall be instructed in conducting administrative
25 hearings. No commission member who participated in the probable cause
26 determination process in a given case shall serve on the hearing panel.
27 All hearings shall be held with the object of ascertaining the truth. Any
28 person complained against may appear in person and may be represented by
29 legal counsel, and may produce, examine and cross-examine witnesses, and,
30 if he chooses to do so, may submit for the consideration of the hearing panel
31 a statement, in writing, in lieu of oral testimony, but any such statement
32 shall be under oath and the affiant shall be subject to cross-examination.

33 (5) The state superintendent of public instruction, as authorized by
34 the state board of education, has the power to issue subpoenas and compel
35 the attendance of witnesses and compel the production of pertinent papers,
36 books, documents, records, accounts and testimony. The state board or its
37 authorized representative may, if a witness refuses to attend or testify
38 or to produce any papers required by such subpoena, report to the district
39 court in and for the county in which the proceeding is pending, by petition,
40 setting forth that a due notice has been given of the time and place of
41 attendance of the witnesses, or the production of the papers, that the
42 witness has been properly summoned, and that the witness has failed and
43 refused to attend or produce the papers required by this subpoena before the
44 board, or its representative, or has refused to answer questions propounded
45 to him in the course of the proceedings, and ask for an order of the court
46 compelling the witness to attend and testify and produce the papers before
47 the board. The court, upon the petition of the board, shall enter an order
48 directing the witness to appear before the court at a time and place to be
49 fixed by the court in the order, the time to be not more than ten (10) days
50 from the date of the order, and then and there shall show cause why he has

not attended and testified or produced the papers before the board or its representative. A copy of the order shall be served upon the witness. If it shall appear to the court that the subpoena was regularly issued by the board and regularly served, the court shall thereupon order that the witness appear before the board at the time and place fixed in the order and testify or produce the required papers. Upon failure to obey the order, the witness shall be dealt with for contempt of court. The subpoenas shall be served and witness fees and mileage paid as allowed in civil cases in the district courts of this state.

(6) At the conclusion of any hearing dealing with the revocation, suspension, denial of a certificate, placing reasonable conditions on the certificate, or issuing a letter of reprimand, the hearing panel shall submit to the chief certification officer, a concise statement of the proceedings, a summary of the testimony, and any documentary evidence offered, together with the findings of fact and a decision. The hearing panel may determine to suspend or revoke the certificate, or the panel may order that reasonable conditions be placed on the certificate or a letter of reprimand be sent to the certificate holder, or if there are not sufficient grounds, the allegation against the certificate holder is dismissed and is so recorded.

(7) The hearing panel's decision shall be given to the person complained against and a copy of the panel's decision shall be made a permanent part of the record of the certificate holder.

(8) The final decision of the ~~professional standards commission~~ hearing panel shall be subject to judicial review in accordance with the provisions of chapter 52, title 67, Idaho Code, in the district court of the county in which the holder of a revoked certificate has been last employed as a teacher.

(9) The professional standards commission shall have the authority to impose a fee in an amount not to exceed one thousand dollars (\$1,000), to be paid by the appellant, to defray the actual appeal and investigation costs of the panel, provided that the decision of the panel is to uphold the complaint or impose a greater sanction.

(10) Whenever any certificate has been revoked, suspended or has had reasonable conditions placed upon it, or an application has been denied, the professional standards commission may, upon a clear showing that the cause constituting grounds for the listed actions no longer exists, issue a valid certificate. Provided however, that no certificate shall be issued to any person who has been convicted of any crime listed in subsection 2. of section 33-1208, Idaho Code.

(11) The chief certification officer shall deny an application from an out-of-state teacher if there are any conditions on that certificate or if there is any form of pending investigation ongoing against that certificate in the issuing state. Reapplication may be made once all investigations have been completed and all conditions have been satisfied, resulting in a clear certificate from the issuing state.

(12) For the purposes of this section, the term "teacher" shall include any individual required to hold a certificate pursuant to section 33-1201, Idaho Code.

1 SECTION 2. That Chapter 12, Title 33, Idaho Code, be, and the same is
2 hereby amended by the addition thereto of a NEW SECTION, to be known and
3 designated as Section 33-1210, Idaho Code, and to read as follows:

4 33-1210. INFORMATION ON PAST JOB PERFORMANCE. (1) As used in this
5 section:

6 (a) "Applicant" means an applicant for employment in a certificated or
7 noncertificated position who is currently or was previously employed by
8 a school district.

9 (b) "Employer" means a school district employer.

10 (2) Before hiring an applicant, a school district shall request the
11 applicant to sign a statement:

12 (a) Authorizing the applicant's current and past employers, including
13 employers outside of the state of Idaho, to release to the hiring
14 school district all information relating to the job performance and/or
15 job-related conduct, if any, of the applicant and making available
16 to the hiring school district copies of all documents in the previous
17 employer's personnel, investigative, or other files relating to the job
18 performance by the applicant; and

19 (b) Releasing the applicant's current and past employers, and
20 employees acting on behalf of that employer, from any liability for
21 providing information described in paragraph (a) of this subsection, as
22 provided in subsection (4) of this section.

23 (3) Before hiring an applicant, a school district shall request
24 in writing, electronic or otherwise, the applicant's current and past
25 employers, including out-of-state employers, to provide the information
26 described in subsection (2)(a) of this section, if any. The request shall
27 include a copy of the statement signed by the applicant under subsection (2)
28 of this section.

29 (4) Not later than twenty (20) business days after receiving a request
30 under subsection (3) of this section, a school district within Idaho shall
31 provide the information requested and make available to the requesting
32 school district copies of all documents in the applicant's personnel record
33 relating to job performance. The school district, or an employee acting on
34 behalf of the school district, who in good faith discloses information under
35 this section either in writing, printed material, electronic material or
36 orally is immune from civil liability for the disclosure. An employer is
37 presumed to be acting in good faith at the time of the disclosure under this
38 section unless a preponderance of the evidence establishes one (1) or more
39 of the following: (a) that the employer knew the information disclosed was
40 false or misleading; (b) that the employer disclosed the information with
41 reckless disregard for the truth; (c) that the disclosure was specifically
42 prohibited by a state or federal statute.

43 (5) A hiring district shall request from the office of the
44 superintendent of public instruction verification of certification status,
45 any past or pending violations of the professional code of ethics, and
46 information relating to job performance as established by the provisions of
47 subsection (11) of this section, if any, for applicants for certificated
48 employment.

1 (6) A school district shall not hire an applicant who does not sign the
2 statement described in subsection (2) of this section.

3 (7) School districts may employ applicants on a conditional basis
4 pending the district's review of information obtained under this section.
5 When requests are sent to out-of-state employers under subsection (3)
6 of this section, an applicant who has signed the statement described
7 in subsection (2) of this section, shall not be prevented from gaining
8 employment in Idaho public schools if the laws or policies of that other
9 state prevent documents from being made available to Idaho school districts
10 or if the out-of-state school district fails or refuses to cooperate with the
11 request.

12 (8) Information received pursuant to this section shall be used
13 by a school district only for the purpose of evaluating an applicant's
14 qualifications for employment in the position for which he or she has
15 applied. Except as otherwise provided by law, a board member or employee of
16 a school district shall not disclose the information to any person, other
17 than the applicant, who is not directly involved in the process of evaluating
18 the applicant's qualifications for employment. A person who violates the
19 provisions of this subsection may be civilly liable for damages caused by
20 such violation.

21 (9) Beginning September 1, 2010, the board or an official of a school
22 district shall not enter into a collective bargaining agreement, individual
23 employment contract, resignation agreement, severance agreement, or any
24 other contract or agreement that has the effect of suppressing information
25 about negative job performance by a present or former employee or of
26 expunging information about that performance or misconduct from any
27 documents in the previous employer's personnel, investigative, or other
28 files relating to job performance by the applicant. Any provision of a
29 contract or agreement that is contrary to this subsection is void and
30 unenforceable. This subsection does not restrict the expungement from a
31 personnel file of information about alleged verbal or physical abuse or
32 sexual misconduct that has not been substantiated.

33 (10) This section does not prevent a school district from requesting or
34 requiring an applicant to provide information other than that described in
35 this section.

36 (11) By September 1, 2010, the state board of education has the
37 authority to and shall adopt rules defining job standards performance and
38 "verbal abuse," "physical abuse," and "sexual misconduct" as used in this
39 section for application to all certificated and noncertificated employees.
40 The definitions of job standards performance, verbal and physical abuse and
41 sexual misconduct adopted by the state board of education must include the
42 requirement that the school district has made a determination that there is
43 sufficient information to conclude that the abuse or misconduct occurred and
44 that the abuse or misconduct resulted in the employee's leaving his or her
45 position at the school district.

46 SECTION 3. That Section 33-1211, Idaho Code, be, and the same is hereby
47 amended to read as follows:

48 33-1211. PRIVILEGED COMMUNICATION OR PUBLICATION. Any publication or
49 communication made by any member of the state board of education, or by any

1 person delegated by the said state board to hold or conduct any hearing, or
2 by any certification officer of the state board of education, in the proper
3 discharge of any official duty imposed under sections ~~33-1208~~ or 33-1209,
4 ~~or 33-1210~~, Idaho Code, shall be subject to disclosure according to chapter
5 3, title 9, Idaho Code.